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SUBJECT: RIGHT TO FOOD: INTERGOVERNMENTAL WORKING GROUP
MAKES PROGRESS ON VOLUNTARY GUIDELINES

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1. (U) Summary: The third (and supposedly final) session of the Intergovernmental Working Group (IGWG) for the Elaboration of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security met in Rome from 5 to 10 July 2004. Delegates made substantial progress on many points, but time ran out before they could reach agreement on a final text. The major stumbling block was G-77 insistence -- against strong EU opposition -- to characterizing the section on the International Framework as "guidelines." The U.S. delegation was successful in introducing language consistent with USG positions on market systems, food aid and women's rights. The U.S. was also successful in narrowing the definition of "right to adequate food" so that it neither implies an entitlement nor a right to a remedy for those without food.

2. (SBU) Cuba, supported by other Latins, held hostage a U.S.-proposed amendment that food would not be used as a political weapons domestically, holding out for insertion of comparable language on unilateral measures in the international section. Language introduced by Syria on the duties of an occupying power and language introduced by Cuba on unilateral measures and the use of food as a political/economic weapon remained unresolved when the talks ended. We were successful in containing the international section largely to a rhetorical reiteration of text from recent international conferences such as UNCTAD XI, WSSD, and Monterrey.

3. (SBU) Although North-South tensions flared when an impasse was reached in the early morning hours of Saturday morning, delegations meeting in a final plenary session later in the day (1) recognized that substantial progress had been made and (2) in principle accepted the Chairman's proposal for more intersessional work and an additional IGWG to be held in October to finalize the text. Consistent with the FAO's practice of organizing representation by regional groups, the U.S. negotiated jointly with Canada; we were mostly like-minded and cooperated extremely well. Delegates welcomed the North America's constructive and positive role in the negotiations. End summary.

OVERVIEW

4. (U) The third session of the IGWG met in Rome under the skilled chairmanship of Iranian Permrep Mohammad Noori. A compilation of text proposals made at IGWG2 (2-5 Feb 2004) and subsequently consolidated and cleaned up by the Bureau at its meeting of 26-29 April 2004, served as the basis for the negotiations. Apart from opening and closing plenary sessions, negotiations for most of the week took place in three separate, concurrent Working Groups, focusing on the Introduction/Preface, the International Framework, and the actual Voluntary Guidelines, respectively.

5. (U) In an effort to streamline the Working Groups' discussions, the Chair -- with the support of the Bureau -- urged delegates to speak only on behalf of their regional groups, and he announced that new text proposals would be accepted only if supported by at least two regional groups. These ground rules helped speed up the discussions, even if they were not always strictly observed. (The European Regional Group was particularly divided, with Norway and Switzerland unabashedly pursuing

their own agenda distinct from that of the EU.) As at the previous IGWG, stakeholders (NGOs) were able to speak to any agenda issue -- through their spokespersons -- on an equal footing with governments and international organizations, but were not allowed to propose text or participate in decision-making.

16. (U) The U.S. delegation was headed by Richard Behrend (Director, IO/EDA), and included Willem Brakel

(U.S. Mission), Christopher Camponovo (DRL/MLA), Katherine Gorove (L/HRR), and Sharon Kotok (IO/EDA). The delegation worked closely and smoothly with the two Canadian representatives, one from the human rights and the other from the legal office in the Department of Foreign Affairs and International Trade.

WORKING GROUP I - INTRODUCTION/PREFACE

17. (SBU) Working Group I developed a Preface that begins with references to the Millennium Summit and World Food Summit goals on reducing world hunger. The text then outlines the historical basis of the mandate for the Voluntary Guidelines in the World Food Summit Plan of Action and Declaration of the World Food Summit: five years later. A key USG concern in the prefatory and introductory text had been proposed language on the substantive content and scope of an international "right to adequate food." The U.S. delegation was successful in restraining attempts to characterize such a right as an entitlement or in defining it in a way that would be at variance with the long-standing USG position -- that such "rights" are to be progressively realized by a State and are non-justiciable in nature. References to obligations of countries were limited to States Parties to the International Covenant on Economic, Social and Cultural Rights. Language that would have given undue stature to General Comment 12 of the Committee on Economic, Cultural and Social Rights also was successfully rebuffed.

18. (SBU) Also referred to the Working Group was Guideline 15 (on Crises and Emergencies), which was considered together with one paragraph in the introductory section. Although there was some preliminary agreement on the content of the paragraphs that would pertain to food issues and armed conflict, language introduced by Syria on the duties of an occupying power proved contentious. The Syrian delegate, supported by others in the G-77, attempted to introduce extensive language from the Additional Protocols to the Geneva Conventions, which USdel strenuously opposed. At the eleventh hour, the Swiss delegation proposed compromise language verbatim from the Fourth Geneva Convention that would have been acceptable to the U.S.; however, the clock ran out after negotiations on the International Dimension collapsed. Consequently, all of the language pertaining to armed conflict and occupation still remains unresolved.

WORKING GROUP II - INTERNATIONAL DIMENSION

19. (SBU) In the section entitled International Dimension, IGWG3 negotiators reached agreement in the following areas, drawing on consensus language from major recent international meetings: Objective, International Cooperation, Role of the International Community, Technical Cooperation, and International Trade. Similarly, agreement was reached regarding paragraphs on External Debt, Official Development Assistance, Partnerships with NGOs/CSOs/Private Sector, and Promotion and Protection of Human Rights. Agreed language on International reporting indicated that "states may report on a voluntary basis on relevant activities and progress achieved in implementing the Voluntary Guidelines...."

110. (SBU) A particular concern for the USG was that the IGWG not accept any language implying criticism of the U.S. embargo of the Cuban regime that went beyond standard language agreed at other international fora. The U.S. delegation was especially vigilant to avoid a document containing, through juxtaposition of text, the erroneous implication that the U.S. was somehow using food as a weapon against the Castro government. An added USdel worry was that, if all outstanding issues were resolved with the exception of implicitly anti-U.S. text, there might be pressure on all other delegates to agree to a document from which the USG would then have to dissociate itself.

111. (SBU) At the same time, discussions in Working Group II exposed a major fault line between North and South. G-77 representatives became increasingly

insistent that elements of the International Dimension be elevated to a status equivalent to that of the Voluntary Guidelines for national, domestic action. The EU had expressed flat opposition to any Guidelines with international content, leaving Working Group II stalemated on this key issue. North America took a more nuanced approach to this question, and therefore was in a position later to serve as an intermediary in this discussion.

WORKING GROUP III - GUIDELINES

¶12. (SBU) Working Group III made its way methodically through 18 draft Voluntary Guidelines. Good progress was made in finding consensus language rooted in practical measures. The titles of the Guidelines give an indication of the scope of this exercise:

- (1) Democracy, Good Governance and Human Rights
- (2) Economic Development Policies
- (3) Strategies
- (4) Market Systems
- (5) Institutions
- (5bis) Stakeholders
- (6) Legal Framework
- (7) Access to Resources and Assets
- (8) Food Safety and Consumer Protection
- (9) Nutrition
- (10) Education and Awareness Raising
- (11) National Financial Resources
- (12) Support for Vulnerable Groups
- (13) Safety Nets
- (14) International Food Aid
- (15) Crises and Emergencies - referred to WG II
- (16) Monitoring, Indicators and Benchmarks
- (16bis) The Rule of Law
- (17) National Human Rights Institutions

¶13. (SBU) Working Group III finalized language for nearly all the Guidelines it considered, with the specific exception of Guidelines or portions of Guidelines with international content, which were all referred to Working Group II at the insistence of the EU and with the tacit support of North America. Guidelines 3.10, 4.6, 4.8, 4.9, 4.10, 8.8, 11.1 fell into the latter category. Guideline 1.2 on food as a tool for political and economic pressure at the national level was held up by the G-77 pending resolution of similar language in the international context. Due to lack of time, WG III did not complete negotiation of Guideline 16 bis (Rule of Law) and it did not resolve one outstanding point in Guideline 14.2 regarding food safety standards in international food transactions.

MERGING THE OUTPUT OF THE WORKING GROUPS

¶14. (SBU) The initial aim of the Chairman and Bureau had been for the Working Groups to complete their respective texts in the first four days, allowing the last day of IGWG3, Friday, for a plenary session to merge their efforts and to deal with crosscutting issues or other unresolved questions. Nevertheless, despite having held up to three negotiating sessions per day -- morning, afternoon and evening sessions running until 10:00 p.m. -- for four full days, the working groups still had not fully completed their respective tasks by Friday evening. At midnight on Friday evening, the Chairman decided to convene a joint meeting of Working Groups II and III in Friends-of-the-Chair format to thrash out areas of overlap between the International Dimension text and the actual Guidelines, notwithstanding that neither Working Group had finished its task. His stated intention was to continue negotiations through the night until the entire document was complete.

¶15. (SBU) In parallel, the Chair asked Canada to head a small negotiating group to resolve the OECD/G-77 split on the status of the International Dimension. In these talks, the G-77 remained insistent, and their proposals for how to characterize the international issues included references to a Plan of Action that gave international cooperation far more weight and emphasis than the EU and

other OECD were prepared to accept in a document ostensibly geared to actions "in the context of national food security." Upon reaching this impasse, the G-77 caucused, and at about 3:00 a.m. returned to the Friends of the Chair, where they declared the gap to be unbridgeable in the near term, and called for an end to IGWG3 discussion. Chairman Noori dissolved the meeting at about 3:15 a.m. on Saturday morning.

FINAL PLENARY - NEXT STEPS

¶16. (U) The IGWG reconvened in plenary session midday on Saturday. Chairman Noori's conclusion, seconded by all regional group spokespersons, was that negotiators had made a lot of progress at IGWG3. It was noted that there was a willingness on all sides to resume negotiations at a later date, but that IGWG3 had run out of time. Noori proposed the following course of action:

-- The Secretariat will circulate the complete negotiated text as we left it early Saturday morning, together with a brief Chairman's report on IGWG3.

-- The Chairman will convene meeting(s) of the Bureau (or Rome-based alternates) to continue its work.

-- A Friends of the Chair meeting -- 3 per region -- would meet for one or two days during or on the margins of the Committee on Food Security meeting of 20-24 September to continue negotiation of the text.

-- An additional meeting of the IGWG, probably of two days' duration, would be convened in October (subject to availability of donor funding) to complete and formally approve the text.

-- The final text would be submitted to the FAO Council of 22-27 November.

¶17. (U) Most delegations seemed generally satisfied with this course of action. Speaking for North America, U.S. delegate thanked the chairs of the three Working Groups, made note of the progress that had been made during the week, but also pointed to several important issues that remained unresolved and cautioned against unrealistic expectations. USdel welcomed the Chair's proposal and noted U.S. willingness to continue working with the aim of reaching a consensus text in October.

FAO SECRETARIAT INFORMATION PAPERS

¶18. (U) At IGWG3 the Secretariat circulated a series of draft information papers addressing aspects related to the mandate of the IGWG:

IGWG RTFG/INF5 - Right to Food Principles vis--vis Rules Governing International Trade;

IGWG RTFG/INF6 - Food Aid and the Right to Food;

IGWG RTFG/INF7 - Justiciability of the Right to Food; and

IGWG RTFG/INF8 - Monitoring the Implementation of the Right to Adequate Food.

Member states were invited to provide their comments by the end of August. Although the contents of these papers are unlikely to influence the conclusion of the negotiation, they will become relevant as states begin to implement the Voluntary Guidelines. It therefore will be important for USG agencies to study these reports and provide a response to the Secretariat.

¶19. (U) Also, the Secretariat prepared and circulated colored maps indicating the "Level of Protection of the Right to Adequate Food based on Provisions from the Text of National Constitutions." Revealingly, the map showed a striking disconnect between countries' food security and their constitutional protection of the right to food. Countries indicated to be with "no protection" included the U.S., Australia, New Zealand, Denmark and UK, whereas

countries credited with having an explicit reference to the right to food in their constitutions included Afghanistan, Angola, Bangladesh, Ethiopia and North Korea.

COMMENT

¶20. (SBU) Although IGWG3 did not complete negotiation of the Voluntary Guidelines, it made unexpectedly significant progress, thanks in part to the effectiveness and persuasiveness of Chairman Noori. Despite the letdown of failure to finalize a document, most delegations seemed relatively optimistic that the negotiations could be concluded with the two additional meetings proposed by the Chair for September and October ¶2004. Delegates welcomed the USG's constructive and positive role in the negotiations. Without having had to compromise on fundamental principles, we nevertheless

were able to accommodate the wish of many delegations to consider voluntary measures towards implementation of a human rights-based approach to hunger at the national level.

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